IN THE HIGH COURT OF JUDICATURE AT PATNA

LPA No.642 of 2007

1.THE STATE OF BIHAR
2.EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, MADHUBANI

…….. APPELLANTS

-Versus-

1.MAHENDRA PRASAD S/O LATE JANKI PRASAD
2.CHAMPA DEVI D/O LATE JANUI PRASAD, BOTH RESIDENT OF VILLAGE – SITAPATTI, P.O. – AHIYAPUR, DISTRICT – GOPALGANJ AT PRESENT RESIDENT OF MOHALLA – BHOURRA, WARD NO.20, KOTWALI CHOWK, P.S. MADHUBANI, DISTRICT – MADHUBANI.

……RESPONDENT 1ST SET.

3. ACCOUNTANT GENERAL, BIHAR, PATNA
4. TREASURY OFFICER, MADHUBANI

…….RESPONDENT 2ND SET.

For the appellants: Mr. Sunil Kumar Karn, JC to AAG - VI
For the respondents : None

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P R E S E N T

Hon'ble the Chief Justice
And
Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 25th September, 2008

By a separate order passed in MJC. No.464 of 2008, we restored the appeal today.

2. The appeal is taken up for admission.

3. We heard the Government counsel.

4. In our view, the appeal is devoid of any substance and does not deserve to be admitted.

5. Janki Prasad (erstwhile employee), who is now survived by the present respondent nos. 1 & 2, filed a writ petition before this court for refund of amount of Rs.36,237/- to him with interest and to fix the pension and other post retirement benefits on the basis of salary drawn on the date of retirement and for quashing annexures -3 & 4 annexed with the writ petition.

6. Deduction was purportedly made on the ground that his pay was wrongly fixed as he was not entitled under the time bound promotion scheme and its consequential benefits.

7. The single judge after hearing the parties held that there was no fraud or misrepresentation by the employee and , as a matter of fact, the department failed to establish that there was his role in wrong fixation of his salary. The single judge , accordingly, dismissed the writ petition..

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8. The single judge considered the matter thus:

> "In the case of Sahib Ram vs. State of Haryana, reported in 1995 Spp. (1) SCC 18, the upgraded pay scale was given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee. The Supreme Court held that the excess payment made to the employee cannot be recovered. Relying on a decision of the Supreme Court this court in the cases of Raghubir Prasad Singh vs. Bihar State Electricity Board & Ors., (1996 BBCJ 15), Gupteshwar Prasad vs. The State of Bihar & Ors., (1999 (3) PLJR 572) and several other cases has held that if the excess payment had been made without there being any misrepresentation on the part of the employee, it is not open to the employer to recover the same.
>
> In this case the respondents, of course, have alleged that the petitioner by bringing the office and then Executive Engineer in collusion, contrary to the provisions of the scheme, got the second time promotion sanctioned with

> effect from 1.4.1981, but as held in the case of Gupteshwar Prasad (supra) the allegation has also to be proved but there is nothing to show that actually the petitioner had played fraud on the employer. The petitioner was simply a Tubewell Borer. The pay had to be fixed by the Executive Engineer. So, there is no question of any fraud or misrepresentation by the petitioner.
>
> Therefore, the respondents were not entitled to recover the amount of Rs.36,237/- from him."

9. On the basis of the aforesaid finding, the single judge directed the present appellants (respondents therein) to refund the amount of Rs.36,237/- to the present respondents with interest at the rate of 5 % per annum and to fix the pensionary benefits on the basis of salary which the erstwhile employee was actually drawing.

10. The order of the single judge does not suffer from any legal infirmity justifying interference by us.

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11. Letters patent appeal is dismissed in limine.

R. M. Lodha, CJ.

Kishore K. Mandal, J.

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